IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

FAO.No. 31 of 2007()

AS.71/2005 of SUB COURT, THIRUVALLA
OS.88/1998 of MUNSIFF COURT, THIRUVALLA
.....

APPELLANT :

K.N.KUSUMA KUMARI, AGED 51 YEARS,
HOUSEWIFE, D/O. LATE THANKAMMA,
KONATHUPARAMPIL VEEDU, KAVUMBHAGOM MURI,
DO VILLAGE, THIRUVALLA TALUK.

BY ADV. SMT.K.N.KUSUMAKUMARI (PARTY-IN-PERSON)
SMT.K.P.SANTHI (AMICUS-CURIAE)

RESPONDENTS:

K.N. UMANANDAN, AGED 63 YEARS,
RETD., K.S.R.T.C. A.T.O.,
S/O. LATE NARAYANAN, KONATHUPARAMPIL VEEDU,
KAVUMBHAGAM MURI, DO VILLAGE, THIRUVALLA TALUK.

BY ADV. SRI.C.S.MANU

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 06/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN &
V.K.MOHANAN, JJ.

F.A.O. NO. 31 OF 2007

Dated 6th September, 2007

JUDGMENT

Raman, J.

This is an appeal filed by the plaintiff in a suit for partition instituted before the Munsiff's Court, Thiruvalla as O.S.No.88 of 1998. The respondent herein is the Ist defendant in the said suit. The other defendants are not however made parties in this appeal. The trial court passed a preliminary decree for partition and subsequently the final decree was also passed. Against the final decree passed, the respondent herein filed appeal before the Sub Court, Thiruvalla as A.S.71/2005. As per the impugned order, the lower appellate court remanded the case to the trial court after setting aside C1(a) plan for the reason that, as per the plan, 1/9 share of the plaintiff is allotted inclusive of the main pathway which is stated to be used for the ingress and egress of the family members of the house in item No.2. That pathway measures about 40 feet, starts from western road, till it reaches to the courtyard of the house. It is stated that the allotment of the

property inclusive of the pathway to the plaintiff will cause great prejudice to the respondent herein that he will have no other pathway to reach the properties. It is submitted by the parties that the other defendants, though were parties to the proceedings, the lower appellate court remanded the matter, and they remained ex parte and therefore they are not made parties in this appeal. The appellant/plaintiff wanted to support the final decree based on C1(a) plan. But during the pendency of the appeal proceedings, a compromise was arrived at between the parties to this appeal. Since the other defendants are not parties herein, whether the compromise as entered into between the parties will have any effect on the portion of the properties allotted to the other defendants, therefore, cannot be considered in this appeal. Since the lower appellate court remanded the case after setting aside C1(a) plan, and in view of the settlement between the parties, the lower court shall give due weight to the compromise entered into between the parties herein, however, without prejudicially affecting the rights of the other sharers who are not parties to this appeal. If this compromise is found in no way affect

the original allotment of other sharers, the court below, in terms of the compromise, pass appropriate orders. In case it is found that the compromise entered into between the parties may affect other sharers, the trial court will give opportunity to all the parties and dispose of the matter.

The appeal is disposed of accordingly.

Advocate Smt K.P.Santhi assisted this Court as amicus cureae. We appreciate the counsel for the service rendered by her.

P.R.RAMAN, JUDGE.

V.K.MOHANAN, JUDGE.

Kvm/

P.R.RAMAN &

V.K.MOHANAN, J.

F.A.O No.31/2007.

Judgment

Dated 6-9-2007: